

# ANALYSIS OF THE LEGACY FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$6,093,018,603		\$7,970,158,603
Add estimated revenues				
Oil and gas gross production and extraction tax collections (30 percent of collections) (2019 SB 2312) <sup>1</sup>	\$959,140,000		\$971,340,000	
Investment earnings (losses) (2021 HB 1015; 2021 HB 1425) <sup>2,3,4</sup>	1,654,000,000		1,080,000,000	
Total estimated revenues		2,613,140,000		2,051,340,000
Total estimated available		\$8,706,158,603		\$10,021,498,603
Less estimated expenditures and transfers				
Transfer of realized earnings to the general fund (2019 SB 2015; 2021 HB 1015) <sup>3,5,6</sup>	\$736,000,000		\$0	
Transfer of realized earnings to a legacy earnings fund (2021 HB 1380) <sup>6</sup>	0		N/A	
Expenditure of principal <sup>5</sup>	0		0	
Total estimated expenditures and transfers		736,000,000		0
Estimated ending balance		<u>\$7,970,158,603</u>		<u>\$10,021,498,603</u>

<sup>1</sup>The oil and gas tax revenues reflect allocations for August through July (24 months). These amounts reflect actual allocations through February 2021. The estimated allocations for the remainder of the 2019-21 biennium and the estimated allocations for the 2021-23 biennium are based on the 2021 legislative revenue forecast.

Senate Bill No. 2312 (2019) amended the oil and gas tax revenue sharing agreement between the state and the Three Affiliated Tribes of the Fort Berthold Reservation increasing the revenue allocated to the Three Affiliated Tribes and decreasing the revenue allocated to the state. As a result, less revenue is available for allocations to the legacy fund.

<sup>2</sup>Based on the provisions of Section 26 of Article X of the Constitution of North Dakota, investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. North Dakota Century Code Section 21-10-12 provides that the investment earnings are the realized earnings of the fund. Unrealized earnings remain in the fund. The schedule below provides more detail on the investment earnings since the 2013-15 biennium.

	2013-15 Biennium Actual	2015-17 Biennium Actual	2017-19 Biennium Actual	2019-21 Biennium Estimated	2021-23 Biennium Estimated
Realized earnings (losses)	\$145,255,008	\$273,064,100	\$502,243,356	\$736,000,000 <sup>3</sup>	N/A
Unrealized earnings (losses)	67,871,752	252,305,388	167,170,302	918,000,000 <sup>3</sup>	N/A
Total investment earnings (losses)	\$213,126,760	\$525,369,488	\$669,413,658	\$1,654,000,000 <sup>3</sup>	\$1,080,000,000 <sup>3</sup>

**The investment earnings (losses) for the legacy fund for the 2019-21 biennium through February 28, 2021, were approximately \$1,614 million, including realized earnings (losses) of \$696 million and unrealized earnings (losses) of \$918 million.**

<sup>3</sup>The estimated investment earnings shown for the 2019-21 biennium include June 2019 realized earnings of \$46,980,140 due to the timing of the transfer and the reporting of earnings at the end of the 2017-19 biennium. The estimated earnings for the 2019-21 biennium reflect actual unrealized earnings through February 2021 and realized earnings of \$736 million pursuant to House Bill No. 1015 (2021). The estimated earnings for the 2021-23 biennium reflect 6 percent per year of the forecasted average balance of the fund (\$9 billion).

**NOTE: The actual earnings may differ significantly from these estimates based on actual investment performance.**

<sup>4</sup>House Bill No. 1425 (2021) designates a portion of the legacy fund investments to in-state fixed income investments and in-state equity investments. The performance of these investments may affect the earnings of the legacy fund.

<sup>5</sup>The principal and earnings of the legacy fund may not be spent until after June 30, 2017, pursuant to Section 26 of Article X of the Constitution of North Dakota. After June 30, 2017, the principal and earnings may be spent as follows:

- Up to 15 percent of the principal of the legacy fund may be spent during a biennium subject to approval by at least two-thirds of the members elected to each house of the Legislative Assembly.
- The realized earnings accruing after June 30, 2017, are transferred by the State Treasurer to the general fund at the end of the biennium and may be spent from the general fund pursuant to legislative appropriation.

Senate Bill No. 2362 (2019) provides a contingent transfer of \$64.37 million from legacy fund earnings deposited in the general fund to the common schools trust fund if the legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium are at least \$164.37 million. The 2019 Legislative Assembly approved the contingent transfer to correct a shortfall of oil extraction tax collections to the common schools trust fund in prior bienniums.

<sup>6</sup>House Bill No. 1380 (2021) establishes a percent of market value calculation to determine the amount of legacy fund earnings available for spending each biennium and creates a legacy earnings fund. The percent of market value is based on 7 percent of the 5-year average of legacy fund assets. The earnings available for spending would be transferred to a legacy earnings fund for allocations to special funds and other purposes designated by the Legislative Assembly. A portion of the excess earnings are retained in the legacy earnings fund as a reserve for any bond payments, and up to \$100 million of excess earnings are transferred to the legacy fund to become part of the principal with the remaining excess earnings transferred to the strategic investment and improvements fund. The amount of realized earnings that may be transferred to the legacy earnings fund at the end of the 2021-23 biennium is unknown.

#### **FUND HISTORY**

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Section 26 of Article X of the Constitution of North Dakota--to provide 30 percent of oil and gas gross production and oil extraction taxes on oil and gas produced after June 30, 2011, be transferred to the legacy fund. The principal and earnings of the legacy fund may not be spent until after June 30, 2017, and any expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly. Not more than 15 percent of the principal of the legacy fund may be spent during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund, and such transfers become part of the principal of the fund. The State Investment Board is responsible for investment of the principal of the legacy fund. Investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium.

Prior to July 1, 2015, if the unobligated balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund.